

****E-filed 06/21/2010****

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MARION DEAN,

No. C 09-4630

Plaintiff,

v.

**ORDER GRANTING MOTION TO
REMAND**

ANN MILLER RAVEL, et al,

Defendants.

AND CONSOLIDATED MATTER

This action is a consolidation of two lawsuits originally filed in Santa Clara Superior Court. In the first, the County of Santa Clara sought an injunction against its employee Marian Dean to prevent what the County alleged was a threat of workplace violence. In the second action, Dean brought claims against the County and various individual defendants arising out of the employment relationship. In the superior court, the parties entered into a stipulation for an order that would, among other things, consolidate the two cases. Pursuant to that stipulation, the court ordered that two cases be “consolidated for all purposes and only one judgment shall be made herein.”

At the time of the consolidation, Dean had not yet formally served defendants with her complaint, although counsel for the County was in possession of a copy. Shortly after Dean’s

1 complaint was actually served, defendants filed a notice of removal to this Court. Dean now moves
2 for remand, contending that defendants “waived” the right to remove by virtue of stipulating to
3 consolidate the two matters. Defendants oppose, arguing that nothing in the stipulation to
4 consolidate reflects a “clear and unequivocal” waiver of their right to remove. Pursuant to Civil
5 Local Rule 7-1(b), this matter is suitable for disposition without oral argument.

6 The motion to remand is granted. Whether or not defendants’ conduct in stipulating to
7 consolidate the two cases is appropriately characterized as a waiver, the indisputable fact is that this
8 consolidated action includes a matter in which the County is the plaintiff. As such, there simply is
9 no basis for removal jurisdiction over the consolidated case. *See* 28 U.S.C. § 1441 (a) (providing
10 for removal only by defendants). This matter is hereby remanded to Santa Clara Superior Court.

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14 Dated: 06/21/2010



15 RICHARD SEEBORG
16 UNITED STATES DISTRICT JUDGE
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